

**CEQA Improvement Advisory Group**  
**March 15, 2005**  
**Digest Notes**

**I. Overview**

***Introductory Comments from Karen Scarborough, Undersecretary, Resources Agency***

The CEQA Improvement process involves two tracks. The Administration intends to move forward with CEQA legislation this year, though some more complex issues may require further study and deliberation. The Resources Agency wants input from members of the Advisory Group, and will be looking for possible areas of convergence. The A.G. is not expected to come to any consensus. Today's meeting is focused on the first track, CEQA and housing and resource planning. The main purpose of this meeting is to review and discuss the draft legislation as prepared by individuals from the Secretary's CEQA Improvement Technical Advisors and provide comments and suggestions for improvement.

The second track is a long-term process that will look at ways to modernize CEQA across the board, in all the areas in which it is intended to protect environmental quality. Stimulating housing production is a primary goal of the overall effort, but it is not the only goal. For example, this process will also look at CEQA and infrastructure.

***Introductory Comments from Nick Bollman, President & CEO of CCRL***

- Over the years, CEQA has been a very important tool for stopping bad things from happening and for promoting good things in our communities. It is important to keep in mind some of the successes achieved through CEQA throughout the course of this meeting and as we move forward. The CEQA Improvement process is about meeting contemporary needs and making the law better without losing environmental quality.
- The short-term task for today's meeting is to improve CEQA by reducing unnecessary barriers to the construction of an adequate supply of housing, where it's needed, and for households across the full range of income levels. There is a terrible housing crisis in this state. Prices are unaffordably high, and production is inadequate to keep up with demand. CEQA is but one of many policy tools that the Administration is looking at that could be used better to increase the supply of housing.

***General Information***

- Materials related to the CEQA Improvement process are available at this website: <http://ceres.ca.gov/ceqa/>.
- Three new members have been added to the CEQA Improvement Advisory Group: Cliff Graves from the Los Angeles Community Redevelopment Agency, Juliet Ellis from Urban Habitat, and Dr. Richard Jackson, Director of the State Department of Health.
- A.G. members are encouraged to read the "Everyday Heroes" report from the California League of Conservation Voters and the Planning and Conservation League Foundation, which documents CEQA success stories over the years, and is a good reminder of the Governor's commitment to improve CEQA without undermining the intention of protecting environmental quality. Those seeking copies should be in touch with A.G. member Karen Douglas.

- CCRL will be hosting a series of regional dialogues to ensure that a broader range of voices is heard in the process. Input from these dialogues will be brought back to the Administration. A schedule of these dialogues is available on the Resources Agency website under “CEQA.”

### ***General Comments from the Advisory Group***

- The goal of today’s meeting is to encourage the type of development that we want to see and discourage the development of projects we don’t want to see.
- Encouraged that the Administration is tackling this issue, but concerned about the focus on housing. Loss of habitat and farmland are also critical issues. Addressing the issue of resource planning is critical to any successful CEQA improvement effort.
- CEQA may be contributing to the lack of housing construction, but it is not a primary driver of the housing crisis. Need to acknowledge that we have a planning problem and a local government problem in California that is the real root of the issue. The more the group can focus on improving planning in general and not just on the construction of housing, the better.
- The first step we should be taking is defining the planning outcomes that we would like to achieve. What is going to produce more housing in this state? Is it really making changes to CEQA?
- Need to look at other ways to increase infill housing production. For example, develop an inventory of available infill sites.
- While it is important to target infill, the effort needs to be accompanied by disincentives to sprawl.
- Public participation and government accountability are critical elements of CEQA that need to be preserved.
- Getting to a place of better growth patterns and meeting housing needs are both critical, and these two tracks need to be blended together. There are four elements to a successful effort:
  - Doing better planning at the local and regional level and finding the funding to do it right.
  - Figuring out from a regional point of view where we want the growth to go. Infrastructure and services must support the growth in the right areas.
  - *After* doing better planning, streamline the regulatory environment enough so the growth will go where we want it to go.
  - Developing a coordinated strategy for affordable housing, which must be subsidized.
- Defining outcomes and performance standards related to the goals that we are aiming to accomplish must be both a long-term and a short-term focus. Our standards have not kept up with growth management challenges and changes. For example, changes that came from the Clean Air Act and ISTEA have at the regional and local level already prompted changes in the way we do our planning processes and make long-term planning decisions.

## **II. Research Presentations**

Richard Little, Director of USC’s Keston Institute for Infrastructure, and Elisa Barbour from the Public Policy Institute of California gave PowerPoint presentations. Little discussed Keston’s short-term effort to address CEQA and infrastructure, funding for planning and long-term

infrastructure funding options. Barbour laid out a long-term research agenda around CEQA, which is well beyond what PPIC itself can implement but which would help answer the policy questions raised in this process. Both organizations welcome any input from Advisory Group members.

Suggestions/comments on research agendas:

- Include a research item about best practices for public participation and how to ensure this is not lost in the CEQA improvement effort.
- To what extent would more infill happen if CEQA were improved? It would be interesting to research cities and counties in states that do not have a CEQA-like law and compare their levels of infill development to cities and counties in California.

### **III. Presentation by BT&H Secretary McPeak**

Secretary Sunne Wright McPeak of the Business, Transportation and Housing Agency discussed the agency's discussion concepts for increasing housing supply in California, which are being vetted with a parallel (and somewhat overlapping) stakeholders outreach process.

- BT&H is currently working on a legislation package to address the housing issue. The aim of this legislation is to harness market forces, promote regulatory reform, and encourage housing in the right places. The legislation will target the sources of strain that have kept housing from being built.
- The bedrock idea behind the proposals is that every community must accommodate for its own. The proposal currently being put together aims to help local jurisdictions accommodate for future growth. The proposal will also address concerns related to the need for improved conservation and more efficient growth patterns.
- "Take care of your own 20-year land supply approach" aims to zone for better land use and get more competition among landowners. It also aims to have this done on the most compact land footprint possible. Each city/county would be responsible for planning for their own growth based on natural growth or job growth projections, whichever is greater.
- The General Plan horizon would be moved out to twenty years, the housing element horizon would move from five to ten years, and zoning to ten years, to provide more certainty for developers and communities.
- The Administration is discussing incentives and sources of money to pay for better planning. Good planning might be made possible by capturing the revenue stream that currently goes towards EIRs and litigation, which is upwards of several hundred million dollars per year.
- BT&H is currently discussing the proposals with stakeholders and gathering input. Draft language should be prepared soon and legislation introduced.

### **IV. CEQA Improvement "First-Track" Proposal Review**

(The sections of the legislative draft are presented here in the order in which they were discussed at the meeting)

#### ***Section 10: Proactive Resource Planning***

- How would this idea be integrated with other planning processes?
- Concerned that the process this proposes is not really capturing the vastness of the problem.

- Consider redevelopment law as a model for this process. The one thing that redevelopment plans have is a built-in financing mechanism that provides the revenue to get the planning done. This approach gets at the habitat issues, infrastructure issues, and housing issues while providing a revenue stream that is guaranteed.
- The NCCP process is already an effective tool. Instead of creating a separate process that essentially has the same goal but on a smaller scale, strengthen NCCPs (applicable to a broad range of resource issues not just wildlife habitat) and make them a mandatory part of a jurisdiction's planning. The process already has standards and involves the participation of the wildlife community and other state and federal agencies.
- Uncertain about the benefits of this portion of the proposal. The question of scale is of concern because the idea that private land owners would voluntarily do this on their own is a stretch.
- Are we willing to isolate this section from the other elements of the proposal? And what is the role of the landowner? The current version of the proposal does not spell out what the involvement of the land owner is in this process.
- Rather than creating an additional planning process, why not focus on improving the processes we already have? [Response: this is more of an implementation process after planning has been done, but question: how do we assure the quality of the planning on which it is based?]
- There is a marker put down on the issue of streamlining environmental review that should not forget the need for public participation and community review of local projects. If plans had clear performance standards we could focus more on the plan review rather than the project review. But most general plans in CA are out of date and too vague in stating plan goals. The idea of frontloading is a challenge because plans are in such poor shape. Funding for improving plans would be a good place to start.
- If the chief incentive for doing proactive resource planning is to gain CEQA exemptions, why would people engage in this process of voluntary planning if the exemptions are gained in section 2a and 2b of the draft legislative proposal?
- How might the proposal set some standards and provide some more clarification? Typically, certainty is something that builders need, but communities need some certainty with regard to community involvement and the current proposal does not provide them with any sense of that certainty.
- The reward to incentivize participation is that plan cannot be challenged once the public has weighed in. How long is this EIR plan good for? If you have the plan and the project fits with the plan there is no interest in changing the plan. A 5-year time frame is too short. NCCPs are 50-75 years for permits. There could be a single county or a single land owner as the lead to ensure this planning takes place.
- If we are only dealing with the habitat issues NCCP is helpful. However, housing moves everything and it is naïve to assume that if you leave it to the autonomy of the builder to make progress then land will be used efficiently. In this section, there is no accountability and no mechanism or agency to ensure that land efficiency is maximized. Recommended to do more cross-jurisdictional and regional planning on the part of the COGs, air quality boards, and others.
- Regional planning is a bold suggestion for where to take this entire process.

## ***Section 2: Strengthening General Plan Consistency Requirements***

- Do not remove mitigation requirements.
- Scale is of critical concern. City plans versus county plans would help to define the type of development we are after. County plans should be “regional” but often are “parochial” instead.
- Shifting the burden of proof is a significant because it puts the burden on tiering, which is as yet an unproven process, and is nearly impossible to challenge. Putting the burden on the plaintiff writes the public out of the process at the beginning and is a major problem.
- There may be different burdens with different impacts that should be dealt with differently. Projects that have regional or statewide significance should be dealt with differently as their impacts are different. A tiered burden of proof might be one option.

## ***Section 3: Infill Exemption***

- Interested in reducing sprawl and accommodating growth patterns, but concerned about the number of environmental criteria, including the limitation of exemptions on urbanized areas, the limitation to urbanized sites, the limitation on the size of projects, the elimination of affordable housing and inclusionary zoning, and the possibility of eliminating standards. The affordable housing requirements are taken out and replaced by a density requirement, and writes out a vast number of projects from CEQA Improvement.
- Projects in certain areas, both incorporated and unincorporated areas, demonstrate how the existing provision for infill is not clear. The insertion of the language “density of a certain level” would help. Putting development in cities where the services are would also help address some of the challenges.
- If the intent is to focus on infill then the proposal is too broad. Farmland criteria is not stated and should include wetlands, hazards, etc. Without defining farmland more explicitly there is little hope of making any lasting progress.
- This proposal should be used to put housing where it needs to be and where we want it to go.
- Infill applicability for affordable housing requirement is appropriate if the density is understood. Recommended to avoid specific densities, but provide some guidelines for the relative densities that best fit a given site.
- There is a futility in doing CEQA Improvement that is divorced from a smart growth framework. Exempting high-density housing from CEQA sends a message that neighborhoods need not be concerned with transportation accessibility or traffic and this is the wrong message. The question of how productive a housing exemption might be can only be answered when the planning issue is addressed. People will accept higher density when they are told that it is part of an overall solution. Provide some sort of a controlling authority that this is a smart growth project and work backwards from there.
- Housing can not be talked about without talking about location. Where are locational policies in this proposal? Where are remedies to address leapfrog development? Without more specifics the proposal remains troublesome.
- Is exemption the only viable infill strategy? As builders turn more and more toward infill opportunities as a portion of their portfolio, they are not interested in risking capital for an exemption that may be overturned by a lead agency.

- Maybe the exemption process is not something to be meddled with, but on a broader basis we should be thinking about longer environmental benefit planning and think about what will achieve a better balance between environmental review and increased building.
- Perhaps zones, such as is used in redevelopment areas, is a preferable alternative to exemptions. Goals and standards would then apply to an area rather than to a project, and consistency with area goals is the only test.

#### ***Section 4: Record Preparation***

- No major comments

#### ***Section 5: Streamlining Litigation***

- No major comments.

#### ***Section 6: Neutral Administrative Judges***

- No enthusiasm detected for a new procedure that would need a source of funding and could be an added layer of review than review relief.

#### ***Section 7: Clarifying the Alternatives Analysis***

- Three alternatives is an inefficient way of defining alternatives. Is this the analytic framework for an EIR? If you are going to meet water objectives you do not necessarily improve the environment or improve the community by providing these alternatives.
- The use of alternatives analysis is a policy decision that should be made in terms of a broader land use approach, not just in a CEQA context for housing. Often EIR alternatives for housing are not reasonable because the alternative sites are not typically owned by the applicant.
- Alternatives analysis should be done at the general plan level, not at the project level. The “no project” alternative is not a valuable tool, and should be eliminated at the project level. If analysis is done at the plan level, then it can be useful as a way of determining project consistency and/or the application of plan-level mitigation. If it were all frontloaded it might make a difference. Simultaneous analysis of agricultural land and sensitive habitat with development allows the presentation of what are the realistic choices.

#### ***Section 8: Overriding Considerations***

- Lacks an introductory statement on the desire for a jobs-housing balance. This is something that we can all agree to.
- Also should include an introductory statement about the need for housing that meets the state’s housing goals for highly trained workers.
- If someone said they wanted to subdivide farmland into five-acre units, existing law allows for a statement of overriding considerations and housing could be grounds for making a determination, even though it may be bad land use policy. Housing should not trump everything else, but be part of a balanced approach wherever the development occurs. The current proposal gets us away from the desired outcome of smart growth.
- What kind of housing matters a lot. Section 8c does away with the requirement of the lead agency to require mitigation. If the statement of overriding consideration can be taken away then what happens?

### ***Section 9: Making CEQA Data More Accessible***

- Generally favored. A funding source must be found.

### **V. Next Steps**

- A.G. members agreed to form an Urban Infill/Outcomes Committee to further explore 1) the best approach to promoting infill, if an exemptions approach doesn't work, and 2) the development of stated goals and measurement systems for tracking (and rewarding) performance.
- If groups are working on other proposals related to CEQA improvement, it would be useful if those could be shared with the Administration and others (including the regional dialogues) through this process.
- The proactive resource planning idea was the source of much discussion and will be an area for future work for the Advisory Group. The Resources Agency would be happy to hear any ideas for how to proceed on the issue.
- The next meeting will be May 19th.